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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,520	07/07/2003	John C. Benko	BENK. P0107US	7597

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EXAMINER

STRIMBU, GREGORY J

ART UNIT PAPER NUMBER

3634

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,520

Applicant(s)

BENKO, JOHN C.

Examiner

Gregory J. Strimbu

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/26/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Objections

Claims 14 and 18 are objected to because “said last mentioned means” should be replaced with the specific name of the means to avoid confusion. Claim 15 is objected to because it fails to begin with a capital letter. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “normally” on line 3 of claim 1 render the claims indefinite because it is unclear what comprises a “normal” condition. Recitations such as “means” on line 4 of claim 1 render the claims indefinite because it is unclear if the applicant is invoking 35 USC 112, paragraph 6. If the applicant wishes to invoke 35 USC 112, paragraph 6, then it is suggested the applicant use the customary language “means for”. Recitations such as “vertical downward movement” on line 5 of claim 1 render the claims indefinite because it is unclear what element of the invention has the movement. Recitations such as “a counterweight” on line 2 of claim 3 render the claims indefinite because it is unclear if the counterweight is part of the means set forth on line 4 of claim 1 or is in addition to the means set forth above. Recitations such as “offset from the hinge” on line 3 of claim 4 render the claims indefinite because it is unclear if the guide tube or the counterweight is offset from the hinge. Recitations such as “cam

means" on line 2 of claim 5 render the claims indefinite because it appears that the applicant has attempted to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding or following "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor. Taylor discloses a mezzanine safety gate including posts B and B' adapted to be mounted at the edge of a mezzanine, a gate C and C' between said posts, normally closed and locked, a safety railing cage A mounted on said posts for vertical movement and means d responsive to the location of said cage during vertical downward movement to unlock said gate, means f to open said gate responsive to continued downward movement of the cage, a hinge for the gate (not numbered, but shown in figure 1), a guide tube on the gate (not numbered, but comprising the pivot hole of the bracket o), cam means D on the cage, since the element e includes a right angle bend as shown in figure 4, the cam means includes a right angle bend, pad

Art Unit: 3634

means e to maintain the gate closed, a roller a, a spring f, since the means closes the gate and returns it to the position shown in figure 1 after the cage has moved upwardly beyond the gate, Taylor anticipates claims 11 and 13.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 5, 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor as applied to claims 1, 2 and 11-17 above, and further in view of Ellis. Ellis discloses a safety gate comprising posts 6 within which counterweights 34 run.

It would have been obvious to one of ordinary skill in the art to provide Taylor with counterweight disposed within posts, as taught by Ellis, to reduce the amount of energy required to move the cage.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Ellis as applied to claims 3, 4, 5, 10 and 18 above, and further in view of Goodell. Goodell discloses a safety gate having cam means L positioned to cause the gate E to swing more than 90 degrees.

It would have been obvious to one of ordinary skill in the art to provide cam means of Taylor, as modified above, with a ability to open the gate more than 90 degrees, as taught by Goodell, to ensure the cage does not strike the gate.

Allowable Subject Matter

Claims 19-22, as best understood by the examiner, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. It appears that the applicant is attempting to claim the means to lock the gate comprises the counterweight which telescopes into and out of a gate guide tube on the gate. If the applicant were to clearly recite the above aspect of the invention, claims 19-21 would be allowable over the prior art of record.

Response to Arguments

Applicant's arguments filed May 26, 2005 have been fully considered but they are moot in view of the new grounds of rejection.


Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gregory J. Strimbu
Primary Examiner
Art Unit 3634
August 8, 2005